

- SUBJECT:** Regulating the sale or transportation of certain desert plants
- COMMITTEE:** Agriculture and Livestock — favorable, without amendment
- VOTE:** 8 ayes — Gonzalez Toureilles, Anderson, B. Brown, Hardcastle, Heflin, Kleinschmidt, Rios Ybarra, Swinford
- 1 nay — Crabb
- SENATE VOTE:** On final passage, April 30 — 31-0, on Local and Uncontested Calendar
- WITNESSES:** For — (*Registered, but did not testify:* John Herron, The Nature Conservancy; Paige McGhee, The Lone Star Chapter of the Sierra Club; Jim Reaves, Texas Nursery and Landscape Association)
- Against — None
- On — Catherine Wright Steele, Texas Department of Agriculture
- BACKGROUND:** As water-conserving landscaping methods such as xeriscaping become increasingly popular, demand for desert plants such as those found in Arizona and the West Texas desert area has sharply increased. With Arizona having enacted strict regulations of the desert plant trade, the west Texas desert, including the Chihuahuah Desert, has become a prime target for so-called “cactus rustlers,” who illegally harvest or steal desert plants from public and private lands without permission.
- DIGEST:** SB 212 would establish regulations for the sale or transportation of certain desert plants and would provide penalties for their unauthorized sale or transportation. The Texas Department of Agriculture (TDA) would have to adopt and administer rules necessary to enforce the regulations.
- Requirements for sale or transportation.** SB 212 would prohibit a person from selling or offering to sell a desert plant unless the person had documentation as required by TDA rule that the plant had been harvested for sale in compliance with an agreement between the person and TDA. A person also could not transport for transfer a desert plant out of Texas unless the person had the required documentation.

**Registration and compliance agreement with TDA.** A person who grew or harvested desert plants for sale would have to register and enter into a compliance agreement with TDA to ensure that a manifest or other form of documentation would accompany the person's desert plants when any of the plants were sold or transported out of Texas.

In addition, TDA would have to adopt rules to:

- establish minimum standards for compliance agreements and the manifests or other documentation required by compliance agreements; and
- establish procedures for inspection or other mechanisms, as well as any other procedures to ensure that a manifest or other form of documentation provided under a compliance agreement did not misrepresent the source of a desert plant.

**Application for registration.** A person seeking to register with TDA would have to include within an application for registration a written statement on the origin and proper acquisition of the plants.

TDA could charge a registration and compliance agreement fee to offset the costs of administering the regulations concerning desert plants.

**Stop-sale order.** SB 212 would authorize TDA to issue and enforce a written or printed order to stop the sale of a desert plant or a shipment of desert plants that was not accompanied by a manifest or other form of documentation. A person could not sell a plant or a shipment of plants until proper documentation was provided.

**Seizure of desert plants.** With or without process, TDA could seize a desert plant or a shipment of desert plants that was not accompanied by a manifest or other documentation and was intended for transfer out of this state. TDA would have to return any seized desert plants to the owner of the land from which they were harvested. If TDA could not identify the landowner, it would have to deliver the plants to the Parks and Wildlife Department.

**Penalties.** SB 212 would create a criminal offense for the advertising, sale, or offering for sale to a first purchaser a desert plant or shipment of desert plants that was not accompanied by a manifest or other form of documentation. An offense would be punishable by:

- a fine not to exceed \$1,000;
- imprisonment for a term not to exceed 180 days; or
- both fine and imprisonment.

SB 212 also would amend Agriculture Code, sec. 12.020 to permit TDA to assess an administrative penalty of \$500 for a violation of the provisions of the bill.

TDA would have to adopt rules to administer the bill's provisions not later than December 1, 2009.

The provisions added by the bill would apply only to a sale, an offer for sale, or the transportation of a desert plant on or after January 1, 2010.

The bill would take effect September 1, 2009.